



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CANUDA v. THE REPUBLIC OF MOLDOVA

(Application no. 4670/16)

JUDGMENT

STRASBOURG

17 May 2022

This judgment is final but it may be subject to editorial revision.

In the case of Canuda v. the Republic of Moldova,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Branko Lubarda, *President*,

Jovan Ilievski,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 4670/16) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 11 January 2016 by a Moldovan national, Mr Valeriu Canuda, born in 1971 and living in Rezina (“the applicant”) who was represented by Ms A. Balan, a lawyer practising in Chişinău;

the decision to give notice of the complaints concerning Articles 3 and 5 § 3 of the Convention to the Moldovan Government (“the Government”), represented by their Agent, Mr O. Rotari, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 26 April 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant’s ill-treatment by police officers during his arrest, which has allegedly resulted in the applicant’s inability to walk; ineffective investigation into the allegations of ill-treatment; and insufficient medical assistance in prison. The applicant also complained that his detention pending trial for over three years was not based on sufficient and relevant reasons. The applicant complained of a violation of his rights under Articles 3 and 5 § 3 of the Convention.

2. The applicant was arrested on 22 July 2012 on a street in Chişinău. During the arrest or shortly after it, police officers used force against him. The following day a medical report found multiple ecchymoses on his chest and lower back, which confirmed that there had been blows to his back. Since his brutal arrest by the police officers, the applicant has lost his ability to walk or sit, and has attended court hearings lying on a stretcher.

3. The applicant’s complaint of ill-treatment by the police was rejected as being ill-founded on 26 October 2012. The prosecutor concluded that the use of force during the arrest had been lawful. In 2016 an appeal by the applicant was upheld and the procedure was reopened, but shortly afterwards the case was closed again by the prosecutor on the same grounds as before. In 2017 the applicant sought the discontinuation of an appeal brought by him against

the repeated closure of the case, but on 25 February 2020 the examination of his appeal was reinstated after the appellate court concluded that the applicant had been forced to withdraw his appeal.

4. The applicant was held in pre-trial detention until 1 October 2015, when he was sentenced to life imprisonment by the first-instance court. He is currently serving that sentence in Prison no. 17.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police on the day of his arrest, that the investigation into his allegations of ill-treatment had been ineffective, and that the medical assistance he had received in prison for his condition had been insufficient.

6. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

7. The general principles concerning ill-treatment by State agents and the effectiveness of the investigation into allegations of such ill-treatment have been summarised in *Gasanov v. the Republic of Moldova* (no. 39441/09, § 41, 18 December 2012) and *Ciorap v. the Republic of Moldova* (no. 5) (no. 7232/07, §§ 58-60, 15 March 2016).

8. It is undisputed that force was used against the applicant on 22 July 2012, including blows to his back, which resulted in multiple ecchymoses on his chest and lower back, as confirmed by a medical report the following day. Although the applicant had pre-existing spine conditions (cervical and lumbar disc hernia), it is undisputed that he was able to walk before the arrest but had difficulty walking immediately afterwards, and by October 2012 was unable to walk at all.

9. The Government argued that the use of force had been necessary because the applicant had resisted the arrest and was considered a dangerous criminal who could have carried a weapon. They also contended that the cause of the applicant's weakness in his lower limbs had not been discerned. At the same time, they provided an excerpt from the applicant's medical file which mentioned a mixed – traumatic and vertebral-disc – origin of his spine pain and lower limb weakness (tetraparesis).

10. The parties disputed the location where force was used: the applicant submitted that he had been ill-treated after his arrest, on the premises of the temporary detention facility of the Department of Operative Services of the Ministry of the Interior; the Government disagreed and submitted that force had been used strictly during the applicant's arrest on the street.

11. Even assuming that force was used against the applicant in the course of his arrest, the Government did not submit any documents concerning this

incident of the use of force. Although they referred in their submissions to the evolution of the investigation into the applicant's allegations (see paragraph 4 above), they submitted only the verbatim record of the applicant's interview of 21 October 2016 and the court decision of 21 February 2017 discontinuing the examination of the complaint. There is nothing in the file to prove that the authorities examined the specific circumstances in which force had been used against the applicant and whether such force was necessary in those circumstances. The Government therefore failed to prove that the use of force had been indispensable and that it had not been excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

12. In addition, the applicant's limb weakness which prevented him from walking or sitting, appeared after the applicant entered into the State's custody on 22 July 2012. The medical conclusions provided by the Government did not exclude the possibility that it had resulted from the trauma suffered by the applicant during his arrest.

13. In view of the foregoing considerations, the Court concludes that it has not been convincingly shown that the recourse to physical force by the police was made strictly necessary by the applicant's own conduct. Such use of force diminished the applicant's human dignity and amounted to degrading treatment (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 88 and 100, 28 September 2015). There has accordingly been a violation of Article 3 of the Convention in its substantive limb.

14. As to the efficiency of the investigation into the applicant's allegations of ill-treatment, the Government argued that a thorough investigation, including an interview of four police officers, had taken place in the course of the pre-investigation inquiry, which concluded on 26 October 2012 that the applicant's complaint was ill-founded. That procedure was reopened in 2016 when a hierarchically superior prosecutor upheld the applicant's complaint. The applicant was heard and the procedure was discontinued again on 26 October 2016 on the same grounds as before. The court proceedings examining the applicant's appeal were discontinued at the applicant's request on 21 February 2017.

15. The applicant subsequently submitted an appellate court decision of 25 February 2020, which quashed the decision of 21 February 2017 on the ground that the applicant had been forced to request the discontinuation of the proceedings and had not acted freely. The Court was not informed about the outcome of those proceedings.

16. The Government did not submit the investigation documents to which they referred in their description of the facts (see paragraph 11 above). But it does not appear from their submissions that any criminal investigation was actually initiated to allow the collection of evidence (see *Gasanov*, cited above, § 53, and *Ciorap*, cited above, § 62). Moreover, it is undisputed that a hierarchically superior prosecutor ordered the reopening of the case in 2016,

as the investigation in 2012 had been found lacking. There is also no information about whether the applicant's version of the facts – that the ill-treatment occurred on the premises of the temporary detention facility of the Ministry of the Interior – had been investigated. In any event, the authorities failed to investigate thoroughly all relevant aspects, including whether the use of force against the applicant during his arrest was strictly necessary and proportionate.

17. In the light of the above considerations, the Court concludes that there has also been a violation of the procedural limb of Article 3 of the Convention.

18. In view of the above findings of a violation of Article 3 of the Convention, the Court considers that there is no need to give a separate ruling on the applicant's complaint concerning the inadequacy of medical care in prison.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

19. The applicant also complained under Article 5 § 3 of the Convention that his detention pending trial, which lasted for over three years, was excessive and lacked sufficient and relevant reasons, in view of his medical condition.

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

21. The applicant's detention pending trial was ordered and subsequently extended from 22 July 2012 to 1 October 2015. The prosecutor and the courts argued that the applicant, who had committed in the past criminal offences, could abscond and interfere with the criminal investigation. In his appeals the applicant submitted that being bedridden he could not abscond or interfere with the investigation, but the courts were not convinced that if released he would "fulfil his procedural obligations". The situation remained unchanged after the case was committed for trial in September 2012.

22. The Court agrees that the charges against the applicant were particularly serious. However, the domestic courts failed to deal adequately with the applicant's submissions in support of his release. In particular, the domestic courts did not give sufficient consideration to the applicant's argument that he was unlikely to abscond as he was unable to sit or move unaided, apparently treating this argument as irrelevant to the lawfulness of his detention. It is particularly striking that the provided reasons remained unchanged for three more years after the case had been committed for trial. Moreover, the domestic courts cannot be said to have acted consistently when they accepted the more lenient measure of house arrest in respect of a co-defendant in the same case and on the same charges, but who was not bedridden. Where such an important issue as the right to liberty is at stake, it

is incumbent on the domestic authorities to convincingly demonstrate that the detention is necessary (*Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 122, 5 July 2016). This was not the case in the applicant's situation.

23. For these reasons, the Court concludes that there were no relevant and sufficient reasons to order and prolong the applicant's detention pending trial. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant did not submit a claim for just satisfaction within the allocated time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in both its substantive and procedural limbs;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 17 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Branko Lubarda
President